

Summary of FCC 10-175 Sixth Report and Order

I. IMPROVING BROADBAND ACCESS

A. Expanded Access to Low-Cost Fiber

The new FCC rules allow applicants to lease dark or lit fiber from the most cost-effective provider, including telecommunications carriers and non-telecommunications carriers; so that applicants can choose the services that best meet their needs from a broad set of competitive options and in the most cost-effective manner available in the marketplace. This will allow schools to lease fiber from any telecommunications carriers and non-telecommunications carriers, including but not limited to research and education networks, regional, state and local government networks, non-profit and for-profit providers, and utility companies. The goal is to “expand the scope of potential broadband providers to increase competitive options which in turn enhances choice and reduces costs” for both the applicant and the E-rate program.

B. Community Use of E-Rate Funded Facilities and Services

The new FCC rules permit schools to allow community use of some E-rate funded services outside of school hours. This is an option, not an obligation for school districts that want to provide facility use and Internet access to students, parents and the community after school hours. The school district is responsible for developing their own policy(ies) and procedures regarding community use of facilities after hours and may charge fees for computers, training, and facility usage to offset the costs but cannot charge for any service(s) funded with E-rate discounts (i.e. Internet access). In other words, any community use of services purchased with E-rate funds must be incidental and not increase the costs to the E-rate program. The FCC also urges those schools with community access to post their policy(ies) and hours publicly on their website. (See Section II A below)

C. Indexing the Annual Funding Cap

Beginning in the current funding year, the FCC will index the E-rate funding cap to inflation to preserve the purchasing power of the E-Rate Program. The GDP-CPI (Gross Domestic Product-Chain-type Price Index) will be used to measure increases in the rate of inflation for the purposes of increasing the annual E-rate funding cap. During periods of deflation, the FCC will maintain the prior-year cap.

D. Limited Trial to Investigate Offsite Access

The FCC will be seeking proposals for a limited pilot program to establish best practices to support off-campus wireless connectivity for portable learning devices outside of regular school or library operating hours. The EDU2011 pilot program is presently limited to E-rate eligible applicants that have implemented or already in the process of implementing a program to provide off-premise connectivity to students through the use of portable wireless devices.

II. STREAMLINING AND SIMPLIFYING ADMINISTRATIVE REQUIREMENTS:

A. New Forms and Certifications

In addition to other minor modifications to Form 470 and Form 471, the forms must identify the consultant who is assisting the applicant in the E-Rate application process and identify whether they are the authorized person for the district. The FCC rules state that the Form 470 and Form 471 “shall be signed by the person authorized to order eligible services for the eligible school(s), library, or consortium and shall include that person’s certification under oath that...”

Form 470:

I certify that I have considered what financial resources should be available to cover these costs. (Certification added to replace Block 3)

I certify that I am authorized to **procure** eligible services for the eligible entity(ies). (Procure rather than order)

Form 471:

I certify that (if applicable) I posted my Form 470 and (**if applicable**) made any related RFP available for at least 28 days.

The services the school, library, or consortium purchases at discounts will be used **primarily** for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.513 (See II C below)

Form 486:

The FCC intends to add an additional certification provision that a school’s Internet safety policy includes educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyber bullying awareness and response.

In addition to the aforementioned changes to the E-rate Forms, USAC will be collecting information about direct broadband services on the Form 471 that includes the number of buildings at the following speeds: less than 200 kbps, 200 kbps – 1.5 mbps, 1.5 – 3 mbps, 3 – 10 mbps, 10 – 25 mbps, 25 – 50 mbps, 50 – 100 mbps, and greater than 100 mbps.

B. Technology Plan Requirements

The FCC removed the technology plan requirement for Priority 1 (P1)i (telecommunications services and Internet access) services and has added a certification for applicants who do not require a technology plan; “I certify that no technology plan is required by Commission rules”. Applicants are still required to develop a technology plan when requesting discounts for Priority 2 (P2) (Internal Connections and Basic Maintenance of Internal Connections) products and services whereby all previousⁱⁱ FCC rules apply.

C. Disposal of Obsolete Equipment

The new FCC rules will facilitate the disposal and recycling of obsolete equipment that received E-rate support by authorizing schools and libraries to receive consideration for such equipment. After five years, or when the applicant determines the equipment is obsolete, whichever is longer, the applicant is permitted to dispose of the E-rate equipment for payment or other consideration. The rules further state that schools and libraries will not be required to return to USAC any funds received in exchange for the sale or disposal of obsolete E-rate equipment nor report and keep records of said sale or disposal. The USAC will also make available on its website and update on an ongoing basis a list of donation and recycling locations for communications equipment.

III. SAFEGUARDS AGAINST WASTE FRAUD AND ABUSE

A. Competitive Bid Process

The FCC has codified the requirement that the competitive bidding processes are fair and open to all bidders/service providers. Additionally, applicants are reminded that they have been and are required to certify on the Form 471 that they have not received anything of value or a promise of anything of value other than the services and equipment requested on the form.

Triple R will continue with its “best practices” when preparing and providing applicants RFP’s and Form 470’s for an open and fair competitive bid process.

B. Gift Restrictions

The new FCC rules, with exceptionsⁱⁱⁱ, prohibit E-rate applicants from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in the E-rate program. Furthermore, the gift rule makes it a violation for any service provider to offer or provide any gift or other thing of value to those personnel of eligible entities involved with the E-rate program. For example, prohibited gifts would include meals in excess of \$20, tickets to sporting events, and/or trips. These restrictions on gifts are always applicable and not in effect or triggered only during the time period when the competitive bidding process is taking place. The gift rules under the E-rate program are consistent with the gift rules applicable to federal agencies (http://www.usoge.gov/common_ethics_issues/gifts_outside_sources.aspx), which permit only certain de minimis gifts as follows:

1. Modest refreshments that are not offered as part of meal (e.g., coffee and donuts provided at a meeting) and items with little intrinsic value intended for presentation (e.g., certificates and plaques); and
2. items that are worth \$20 or less (e.g., pencils, pens, hats, t-shirts, and other items worth less than \$20, including meals), as long as those items do not exceed an aggregate value of \$50 per employee from any one source per calendar year.

An applicant must also adhere to its own ethical regulations and policy(ies) relating to the acceptance of gifts from a vendor and shall follow the most stringent provision to the extent that a state or local provision is more stringent than the federal requirements, violation of the state or local provision constitutes a violation of the E-rate gift rule.

C. SPIN Change Requests

To prohibit service providers from circumventing a competitive bidding process by offering a new, lower price for products and services that have already been competitively bid and are part of an existing contract, the FCC is implementing new rules for SPIN change requests. The new rules state that after the 28 day waiting period and once a contract for products or services is signed by the applicant and service provider, the applicant may not change to a different service provider during the funding year unless (1) there is a legitimate reason to change providers (e.g., breach of contract or the service provider is unable to perform); **and** (2) the newly selected service provider received the next highest point value in the original bid evaluation, assuming there was more than one bidder.

This FCC rule does not apply to corrective SPIN changes or prohibit communications during the 28-day waiting period as long as all parties are privy to the same information from the applicant during that period and the communications are consistent with any applicable state or local competitive bidding requirements.

D. Payment Quality Assurance Program

In August 2010, USAC rolled out its Payment Quality Assurance (PQA) Program. Under this program, USAC assesses specific payments made to beneficiaries to determine if these payments were made in accordance with program rules. Using results of these assessments, USAC calculates estimates of improper payment rates across entire USF programs and provides this information to the FCC. If selected for a PQA, school districts are required to provide, within 10 business days, the requested documents and information. The requested documents and information can include any document indicating the beneficiary's eligibility status, a Technology Plan Approval Letter, any service provider bills, and Letter of Agency (LOA).

E. SLD Invoice Certification

The USAC reviews requests for disbursements from service providers to determine accurate and appropriate invoices for the products and services delivered for a specified Funding Request Number (FRN). The service provider is required to submit detailed invoices sent to the applicant to support the products and services requested/invoiced; either by BEAR or SPI. In addition to detailed invoices from the service provider, the applicant is required to complete, sign and date a Service Certification for SLD Invoices (SCSI) form within 7 days of the request. This SCSI form has information used by the SLD to verify the applicant's receipt of products and services from the service provider wherein the applicant must certify whether the products and services invoiced by the service provider have been delivered and/or installed or if any agreement(s) for future delivery and installation exists.

F. Beneficiary Audits

The USAC conducts audits of beneficiaries under the Schools & Libraries Program (SLD). SLD "beneficiaries" can be recipients of service, applicants, or billed entities. They may assume more than one of these roles during the course of the application process. The primary purposes of audits are to ensure compliance with FCC rules and program requirements and to assist in the prevention and detection of waste, fraud, and abuse. Beneficiaries are urged by USAC to follow "best practices" for: (1) successful completion of the application process, (2) compliance with program rules during the period of service delivery and invoicing, and (3) the ability to demonstrate compliance with program rules in a beneficiary audit. ***Selection for an audit is not necessarily an indication that USAC believes that problems exist.***

Triple R will continue to follow "best practices" for ensuring compliance and success with the E-rate program.

IV. FY11 ELIGIBLE/INELIGIBLE SERVICES

A. Web Hosting

The FCC reserved web hosting services as an eligible E-Rate service and expanded support for web hosting features that facilitate the ability to communicate, such as blogging, e-mailing over a school or library's hosted website, discussion boards, including services that may facilitate real-time interactive communication such as instant messaging or chat.

B. Unbundled Warranties

The FCC removed unbundled warranties from the Eligible Services List (ESL) Basic Maintenance of Internal Connections category. This will affect any Priority 2 applicant seeking basic maintenance discounts for equipment purchased with E-rate funds. The FCC determined that an unbundled warranty is an ineligible BMIC service because it is purchased as a type of retainer and not as an actual maintenance service.

C. Wireless Internet Access Applications

The FCC declined to include in the Eligible Services List (ESL) software applications that are used in connection with wireless devices. For example, a wireless service solely dedicated to applications that track the location of a school's bus driver or student attendance would be fully ineligible. In addition, if a wireless Internet access service is dedicated to a service or group of services that are ineligible, the entire service request will be deemed ineligible.

D. Enhanced Firewalls

The FCC reserved basic firewall protection as an eligible service, but will not at this time extend support beyond basic firewall protection that is included as part of an Internet access service. The FCC determined that the limited E-rate funds should not be used to support these services.

ⁱTechnology plans that meet the standards of the U.S. Department of Education's Enhancing Education Through Technology (EETT), 20 U.S.C. 6764, are sufficient for satisfying this requirement

ⁱⁱ The plan must be created prior to submitting the Form 470 and applicants must certify that they have prepared any required technology plans. They must also confirm, in FCC Form 486, that their plan was approved before they began receiving services pursuant to it.

ⁱⁱⁱ The restrictions set forth shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible school, library, or consortium that includes an eligible school or library, provided that such transactions are motivated solely by a personal relationship, are not rooted in any service provider business activities or any other business relationship with any such eligible school, library, or consortium, and are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship. Furthermore, any service provider may make charitable donations to an eligible school, library, or consortium that includes an eligible school or library in the support of its programs as long as such contributions are not directly or indirectly related to E-rate procurement activities or decisions and are not given by service providers to circumvent competitive bidding and other E-rate program rules